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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/632,773

08/01/2003

Garry Tsaor

3654

29745

7590

02/07/2006

JOE NIEH

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EXAMINER

HUYNH, KHOA D

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

6

Office Action Summary	Application No. 10/632,773	Applicant(s) TSAUR, GARRY	
	Examiner Khoa D. Huynh	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 7-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species 1 (depicted in Figs. 2A-2B) in the reply filed on 01/19/2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Applicant, in the reply, indicates that claims 1-6 are readable on the elected species. Accordingly, claims 7-20 are withdrawn from further consideration as being drawn to the non-elected inventions.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the hole in the second section that is covered by a removable film as recited in claim 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

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consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Asturias, Jr. (2809386).

Regarding claim 1, the Asturias, Jr. reference discloses an integrated device. The integrated delivery device includes a first section (Fig. 3) comprising a rounded end (about 26) and a cylindrical protrusion (at 11) in an opposite end wherein a small quantity of viscous fluid (toothpaste) is disposed within said cylindrical protrusion, and a second section (Fig. 2) including a rounded end (constitute by the top portion) and a recess (constitute by the hollow portion formed between elements 16 and 14) that approximates the cylindrical protrusion of the first section with a matching protrusion (10,17,19) that engages a hole (constitute by the opening end of the cylindrical portion 11) at the center of the

cylindrical protrusion of the first section wherein the matching protrusion has a small channel (16) through its length that will direct the viscous fluid from the first section into and out of the second section, wherein when the first section and the second section are urged toward or mated to each other, the viscous fluid will be extracted from the integrated delivery device for application.

Regarding claim 3, the rounded end of the second section further includes multiple rounded protrusions (13 in Fig. 2). The rounded end of the first section (about 26) also includes multiple protrusions (constituted by the curved pieces formed on element 26) followed the rounded end of the first portion. The protrusions are provided to assist in the grasping the device and in application of the viscous fluid.

Regarding claims 4 and 5, the viscous fluid is a cream-like substance.

Regarding claim 6, the rounded end (about 26) of the second section is generally in the form of a tip of a lipstick (Fig. 1).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 (as best understood) is rejected under 35 U.S.C. 103(a) as being unpatentable over Asturias, Jr. (as discussed supra) in view of Sherman (3256894).

The Asturias, Jr. reference includes a hole (constitute by the opening of the channel adjacent the bristles). The Asturias, Jr. reference DIFFERS in that the hole does not specifically include a removable film as claimed. Attention, however, is directed to the Sherman reference which discloses another integrated device for dispensing a viscous material. The device includes a removable film (122) for covering a hole (constitute by the opening of the channel 118 adjacent the bristles in Fig. 7). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Asturias, Jr. reference by employing a removable film for the hole, in view of the teaching of Sherman, in order to prevent debris from entering into the channel and blocking the flow of the viscous material to the head.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Khoa D. Huynh', with a horizontal line underneath.

Khoa D. Huynh
Primary Examiner
Art Unit 3751

HK
02/02/2006